to the general rule that other offences of the accused are not relevant to establish the main charge.*

The declarations of each defendant, relating to the transaction under consideration, were evidence against the other, though made in the latter's absence, if the two were engaged at the time in the furtherance of a common design to defraud the plaintiffs. The court placed their admissibility on that ground, and instructed the jury that if they were made after the consummation of the enterprise they should not be regarded.

It is possible that the court erred in its charge upon the subject of damages in directing the jury to add interest to the value of the goods. Interest is not allowable as a matter of law, except in cases of contract, or the unlawful detention of money. In cases of tort its allowance as damages rests in the discretion of the jury. But the error, if it be one, cannot be taken advantage of by the defendants, for they took no exception to the charge on that ground. The charge is inserted at length in the bill, contrary to the proper practice, as repeatedly stated in our decisions, and contrary to an express rule of this court. It embraces several distinct propositions, and a general exception in such case cannot avail the party if any one of them is correct.

JUDGMENT AFFIRMED.

GREEN *v.* VAN BUSKIRK.

1. A., B., and C. were residents and citizens of New York. A. being indebted to both B. and C., and having certain chattels personal in Illinois, mortgaged them to B. Two days afterwards, and before the mortgage could be recorded in Illinois, or the property delivered there, both record and delivery being necessary by the laws of Illinois, though *not* by those of New York, to the validity of the mortgage as against third parties, C. issued an attachment, a proceeding *in rem*, out of one of the courts of Illinois, and, under its laws, in due form, levied on and sold the property. B. did not make himself a party to this suit in attachment, though

* See also Hall *v.* Naylor, 18 New York, 588, and Castle *v.* Bullard, 23 Howard, 172.

he had notice of it, and by the laws of Illinois, a right to take defence to it; but after its termination, brought suit in New York against C. for taking and converting the chattels. C. pleaded in bar the proceedings in attachment in Illinois. The New York courts, holding that the only question was B.'s property in the chattels on the day of the attachment; that the existence or non-existence of such property was to be decided by the law of the domicile of the parties, to wit, New York; and finally, that by this law the property was complete in B. on the execution of the mortgage, adjudged, that the proceedings in attachment in Illinois were not a bar. But—

Held, by this court, that by such judgment, the "full faith and credit" required by the Federal Constitution had not been given in the State of New York to the judicial proceedings of the State of Illinois; and that so the judgment below was erroneous.

2. The fiction of law that the domicile of the owner draws to it his personal estate wherever it may happen to be, yields whenever, for the purposes of justice, the actual *situs* of the property should be examined.

3. By the laws of Illinois an attachment on personal property there, will take precedence of an unrecorded mortgage executed in another State where record is not necessary, though the owner of the chattels, the attaching creditor, and the mortgage creditor, are all residents of such other State.

ERROR to the Supreme Court of the State of New York, the case being thus:

The Constitution of the United States declares that "full faith and credit" shall be given in each State to the judicial proceedings of every other State, and that Congress may prescribe the manner in which such proceedings shall be proved and the effect thereof. Congress, by act of 1790, did accordingly provide that they should "have such faith and credit given to them in every other court of the United States as they have by law or usage in the court from which they are taken."

With these provisions in force, one Bates, who lived in Troy, New York, and owned certain iron safes in Chicago, Illinois, in order to secure an existing debt to Van Buskirk and others, executed and delivered (in the State of New York), to them, on the 3d of November, 1857, a chattel mortgage on the safes. Two days after this, one Green, also a creditor of Bates, sued out of the proper court of Illinois a writ of attachment, caused it to be levied on these safes, got

judgment in the attachment suit, and had the safes sold in satisfaction of his debt. At the time of the levy of this attachment the mortgage had not been recorded in Illinois; nor had possession of the property been delivered under it; nor had the attaching creditor notice of its existence. Green, Van Buskirk, and Bates were citizens of New York.

It was admitted on the record that the proceedings in attachment were regular and in conformity with the laws of Illinois; that the cases of *Martin* v. *Dryden* and *Burnell* v. *Robertson*, reported in the Illinois reports,* rightly explained those laws; that Bates was the owner of the safes on the 3d of November, 1857, and that Green was a *bonâ fide* creditor of Bates. After the levy of the attachment Green received notice of the mortgage, and the claim under it, and Van Buskirk and the others, mortgagees, were informed of the attachment; but they did not make themselves parties to it and contest the right of Green to levy on the safes, which they were authorized by the laws of Illinois to do.

By statutes of Illinois,† *any* creditor can sue out a writ of attachment against a non-resident debtor. Under this writ the officer takes possession of the debtor's property. If the debtor cannot be served with process, he receives notice by publication, and if he does not appear, the creditor, on proving his case, has judgment by default, and execution is issued to sell the property attached. These statutes further enact,‡ that mortgages of personal property are void as against third persons, unless acknowledged and recorded, and unless the property be delivered to and remain with the mortgagee.

In this state of the law in Illinois, Van Buskirk sued Green in one of the inferior courts of New York, for taking and converting the safes, sold as already mentioned under the attachment. Green pleaded in bar the attachment proceedings in Illinois. But the court held that the law of New York was to govern the case, not the law of Illinois, though the property was situated there, and that by the law

* 1 Gilman, 187; 5 Id. 282.

† Revised Statutes of 1845, p. 630, seq. ‡ Ib. ch. 20

of New York the title to the property passed on the execution and delivery of the mortgage, and took precedence of the subsequent attachment in Illinois. This judgment being affirmed in the highest court of the State of New York, Green, assuming that the "faith and credit" which the judicial proceedings in courts of Illinois had by law and usage in that State, were denied to them by the decision just mentioned, took a writ of error to this court, conceiving the case to fall within the 25th section of the Judiciary Act, which gives a writ in cases where, in the highest State court, a clause of the Constitution of the United States is drawn in question, and the decision is against the right, title, or privilege specially set up.

The case having got here, a motion was made in December Term, 1866, to dismiss it for want of jurisdiction; the ground of the motion having been, that the only defence set up in the State court was, that the safes at the time of the seizure and sale belonged to Bates, and that by such seizure and sale Green had acquired his title; that thus the only issue tried and determined in the New York court was the right of property and possession at the time of the seizure.*

But this court overruled the motion to dismiss, and held, that while the question whether the proceedings in the Illinois court had the effect which Green asserted for them, was one to be decided after argument on the merits, yet that the effect which those proceedings had there by law and usage of that State, was a question necessarily decided by the New York court, and decided against the claim set up by Green under the provision of the Constitution quoted, *ante*, on page 140; and that so the case was properly in this court for review.

It was now here for such review; a review on merits.

Mr. Porter, with a brief of Mr. Gale, in support of the judgment below:

The defence in the New York courts was, that the safes

* Green v. Van Buskirk, 5 Wallace, 310.

were Bates's, and were seized and sold as his, under execution in an attachment suit against him. Thus, the leading question was the ownership at the time of the attachment. If the safes were then Bates's, the attachment took effect upon his title; but if they had already passed to his vendees, then the attachment process could not reach them. This leading question of previous ownership, and as to the effect of the sale, as against creditors, necessarily assumed that the Illinois suit and process had their *full effect* of establishing Green in the legal position of attaching creditor of Bates, and entitled, as such, to contest such sale. Whatever interest Bates had, *that*, it was admitted, was bound. The question was, whether he had any interest, a matter which did not depend on the record from Illinois, but on the fact whether the assignment was to be governed by the domicile of the owners or by the *locus rei sitæ*. Full faith and credit was thus given to the record.

The New York courts rightly decided that the sale was governed by the law of sales of New York; for a voluntary transfer of personal property is governed everywhere by the law of the owner's domicile, except, perhaps, as against citizens of the local situation.* Had the question been tried in Illinois, the courts in that State would, therefore, have determined the effect of Bates's sale by the law of his domicile, and, of course, in the same way that it was determined in New York.

This decision, that the New York law governed the sale, was right, for the further reason that the parties, as citzens of New York, were bound by its laws.

Messrs. A. J. Parker and Lyman Trumbull, contra, contended, that the position of the other side, now taken, was just as good an argument against the jurisdiction of the court in the case, as it was on the question of merits. In

* Sill *v.* Worswick, 1 H. Blackston, 690; 2 Kent, § 376; Parsons *v.* Lyman, 20 New York, 103; Burlock *v.* Taylor, 16 Pickering, 335; Van Buskirk *v.* Hartford Ins. Co., 14 Connecticut, 583; Caskie v. Webster, 2 Wallace, Jr., 131.

effect it was the argument made on the motion to dismiss for want of jurisdiction. But this court had refused to dismiss, and so decided that the argument was unsound. The question now before the court had been really disposed of in the former case. And it was disposed of rightly.

In the State of Illinois, and in all other States where there is what is called an attachment law, an attachment levied under it is "*a proceeding in rem.*"* Such a proceeding, if there be jurisdiction, is conclusive upon the *res* against all interested in the property, and the attachment issued holds such interest in the property as the defendant, by the laws of the State, had at that time; though nothing beyond.†

If, therefore, the action had been brought by Van Buskirk in the State of Illinois, he could not, on the facts shown, have recovered, but the court then would have said that he had obtained, under the attachment, a good right to the property.

Such being the effect of the judicial proceeding in question in the State of Illinois, we had a right, under the Constitution, and the act of Congress of 1790, to insist that the same force, effect, and credit, should be given to it in the State of New York.‡

The wisdom of the constitutional and statutory provisions in question making this requirement, and the necessity for strictly enforcing them, are apparent in this case, where it is sought by the defendants in error to convert an act which was *lawful* in the State of Illinois, where it was done, and in regard to property being *there*, into a *trespass* in the State of New York, where they chose to bring these suits.

In conclusion, we refer the court to the case of *Guillander* v. *Howell*,§ decided by the Court of Appeals of the State of New York since the decision of this case. In that case the court seems to abandon the position it held in deciding the present case.

Reply:

In *Guillander* v. *Howell*, the attaching creditor was a citi-

* Martin *v.* Dryden, 1 Gilman, 212.
† Buck *v.* Colbath, 3 Wallace, 346.
‡ Christmas *v.* Russell, 5 Id. 290.
§ 35 New York, 657.

zen of the State in which he applied for the benefit of the attachment laws; while here he was a citizen of another State. This is a material point of distinction; for here the parties, as citizens of New York, were bound by its laws.

Mr. Justice DAVIS delivered the opinion of the court.

That the controversy in this case was substantially ended when this court refused* to dismiss the writ of error for want of jurisdiction, is quite manifest by the effort which the learned counsel for the defendants in error now make, to escape the force of that decision.

The question raised on the motion to dismiss was, whether the Supreme Court of New York, in this case, had decided against a right which Green claimed under the Constitution, and an act of Congress. If it had, then this court had jurisdiction to entertain the writ of error, otherwise not.

It was insisted on the one side, and denied on the other, that the faith and credit which the judicial proceedings in the courts of the State of Illinois had by law and usage in that State, were denied to them by the Supreme Court of New York, in the decision which was rendered.

Whether this was so or not, could only be properly considered when the case came to be heard on its merits; but this court, in denial of the motion to dismiss, *held* that the Supreme Court of New York necessarily decided *what* effect the attachment proceedings in Illinois had by the law and usage in that State; and as it decided against *the* effect which Green claimed for them, this court had jurisdiction, under the clause of the Constitution which declares "that full faith and credit shall be given in each State to the public acts, records, and judicial proceedings in every other State," and the act of Congress of 1790, which gives to those proceedings the same faith and credit in other States, that they have in the State in which they were rendered.

This decision, supported as it was by reason and authority, left for consideration, on the hearing of the case, the inquiry,

* 5 Wallace, 312.

whether the Supreme Court of New York did give to the attachment proceedings in Illinois, the same effect they would have received in the courts of that State.

By the statutes of Illinois, any creditor can sue out a writ of attachment against a non-resident debtor, under which the officer is required to seize and take possession of the debtor's property, and if the debtor cannot be served with process, he is notified by publication, and if he does not appear, the creditor, on making proper proof, is entitled to a judgment by default for his claim, and a special execution is issued to sell the property attached. The judgment is not a lien upon any other property than that attached; nor can any other be taken in execution to satisfy it. These statutes further provide, that mortgages on personal property have no validity against the rights and interests of third persons, without being acknowledged and recorded, unless the property be delivered to and remain with the mortgagee.

And so strict have the courts of Illinois been in construing the statute concerning chattel mortgages, that they have held, if the mortgage cannot be acknowledged in the manner required by the act, there is no way of making it effective, except to deliver the property, and that even actual notice of the mortgage to the creditor, if it is not properly recorded, will not prevent him from attaching and holding the property.*

The policy of the law in Illinois will not permit the owner of personal property to sell it and still continue in possession of it. If between the parties, without delivery, the sale is valid, it has no effect on third persons who, in good faith, get a lien on it; for an attaching creditor stands in the light of a purchaser, and as such will be protected.† But it is unnecessary to cite any other judicial decisions of that State but the cases of *Martin* v. *Dryden*,‡ and *Burnell* v. *Robertson*,§ which are admitted in the record to be a true exposition of the laws of Illinois on the subject, to establish that *there* the

* Henderson *v.* Morgan, 23 Illinois, 431; Porter *v.* Dement, 35 Id. 479.

† Thornton *v.* Davenport, 1 Scammon, 296; Strawn *v.* Jones, 16 Illinois, 117.

‡ 1 Gilman, 187.

§ 5 Id. 282.

safes were subject to the process of attachment, and that the proceedings in attachment took precedence of the prior unrecorded mortgage from Bates.

If Green, at the date of the levy of his attachment, did not know of this mortgage, and subsequently perfected his attachment by judgment, execution, and sale, the attachment held the property, although at the date of the levy of the execution he did know of it. The lien he acquired, as a *bonâ fide* creditor, when he levied his attachment without notice of the mortgage, he had the right to perfect and secure to himself, notwithstanding the fact that the mortgage existed, was known to him, before the judicial proceedings were completed. This doctrine has received the sanction of the highest court in Illinois through a long series of decisions, and may well be considered the settled policy of the State on the subject of the transfer of personal property. If so, the effect which the courts there would give to these proceedings in attachment, is too plain for controversy. It is clear, if Van Buskirk had selected Illinois, instead of New York, to test the liability of these safes to seizure and condemnation, on the same evidence and pleadings, their seizure and condemnation would have been justified.

It is true, the court in Illinois did not undertake to settle in the attachment suit the title to the property, for that question was not involved in it, but when the true state of the property was shown by other evidence, as was done in this suit, then it was obvious that by the laws of Illinois it could be seized in attachment as Bates's property.

In order to give due force and effect to a judicial proceeding, it is often necessary to show by evidence, outside of the record, the predicament of the property on which it operated. This was done in this case, and determined the effect the attachment proceedings in Illinois produced on the safes, which effect was denied to them by the Supreme Court of New York.

At an early day in the history of this court, the act of Congress of 1790, which was passed in execution of an express power conferred by the Constitution, received an in-

terpretation which has never been departed from,* and obtained its latest exposition in the case of *Christmas* v. *Russell.*†

The act declares that the record of a judgment (authenticated in a particular manner), shall have the same faith and credit as it has in the State court from whence it is taken. And this court say: "Congress have therefore declared the effect of the record, by declaring what faith and credit shall be given to it;" and that "it is only necessary to inquire in every case what is the effect of a judgment in the State where it is rendered."

It should be borne in mind in the discussion of this case, that the record in the attachment suit was not used as the foundation of an action, but for purposes of defence. Of course Green could not sue Bates on it, because the court had no jurisdiction of his person; nor could it operate on any other property belonging to Bates than that which was attached. But, as by the law of Illinois, Bates was the owner of the iron safes when the writ of attachment was levied, and as Green could and did lawfully attach them to satisfy his debt in a court which had jurisdiction to render the judgment, and as the safes were lawfully sold to satisfy that judgment, it follows that when thus sold the right of property in them was changed, and the title to them became vested in the purchasers at the sale. And as the effect of the levy, judgment and sale is to protect Green if sued in the courts of Illinois, and these proceedings are produced for his own justification, it ought to require no argument to show that when sued in the court of another State for the same transaction, and he justifies in the same manner, that he is also protected. Any other rule would destroy all safety in derivative titles, and deny to a State the power to regulate the transfer of personal property within its limits and to subject such property to legal proceedings.

Attachment laws, to use the words of Chancellor Kent, "are legal modes of acquiring title to property by operation of law." They exist in every State for the furtherance of

* Mills v. Duryee, 7 Cranch, 481. † 5 Wallace, 290.

justice, with more or less of liberality to creditors. And if the title acquired under the attachment laws of a State, and which is valid there, is not to be held valid in every other State, it were better that those laws were abolished, for they would prove to be but a snare and a delusion to the creditor.

The Vice-Chancellor of New York, in *Cochran* v. *Fitch*,* when discussing the effect of certain attachment proceedings in the State of Connecticut, says: "As there was no fraud shown, and the court in Connecticut had undoubted jurisdiction *in rem* against the complainant, it follows that I am bound in this State to give to the proceedings of that court the same faith and credit they would have in Connecticut." As some of the judges of New York had spoken of these proceedings in another State, without service of process or appearance, as being nullities in that State and void, the same vice-chancellor says: "But these expressions are all to be referred to the cases then under consideration, and it will be found that all those were suits brought upon the foreign judgment as a debt, to enforce it against the person of the debtor, in which it was attempted to set up the judgment as one binding on the person."

The distinction between the effect of proceedings by foreign attachments, when offered in evidence as the ground of recovery against the person of the debtor, and their effect when used in defence to justify the conduct of the attaching creditor, is manifest and supported by authority.† Chief Justice Parker, in *Hall* v. *Williams*,‡ speaking of the force and effect of judgments recovered in other States, says: "Such a judgment is to conclude as to everything over which the court which rendered it had jurisdiction. If the property of the citizen of another State, within its lawful jurisdiction, is condemned by lawful process there, the decree is final and conclusive."

It would seem to be unnecessary to continue this investigation further, but our great respect for the learned court

* 1 Sandford Ch. 146.

† Cochran *v.* Fitch, 1 Sandford Ch. 146; Kane *v.* Cook 8 California, 449.

‡ 6 Pickering, 232.

that pronounced the judgment in this case, induces us to notice the ground on which they rested their decision. It is, that the law of the State of New York is to govern this transaction, and not the law of the State of Illinois where the property was situated; and as, by the law of New York, Bates had no property in the safes at the date of the levy of the writ of attachment, therefore none could be acquired by the attachment. The theory of the case is, that the voluntary transfer of personal property is to be governed everywhere by the law of the owner's domicile, and this theory proceeds on the fiction of law that the domicile of the owner draws to it the personal estate which he owns wherever it may happen to be located. But this fiction is by no means of universal application, and as Judge Story says, "yields whenever it is necessary for the purposes of justice that the actual *situs* of the thing should be examined." It has yielded in New York on the power of the State to tax the personal property of one of her citizens, situated in a sister State,* and always yields to "laws for attaching the estate of non-residents, because such laws necessarily assume that property has a *situs* entirely distinct from the owner's domicile." If New York cannot compel the personal property of Bates (one of her citizens) in Chicago to contribute to the expenses of her government, and if Bates had the legal right to own such property there, and was protected in its ownership by the laws of the State; and as the power to protect implies the right to regulate, it would seem to follow that the dominion of Illinois over the property was complete, and her right perfect to regulate its transfer and subject it to process and execution in her own way and by her own laws.

We do not propose to discuss the question how far the transfer of personal property lawful in the owner's domicile will be respected in the courts of the country where the property is located and a different rule of transfer prevails.

* The People ex. rel. Hoyt *v.* The Commissioner of Taxes, 23 New York, 225.

It is a vexed question, on which learned courts have differed; but after all there is no absolute right to have such transfer respected, and it is only on a principle of comity that it is ever allowed. And this principle of comity always yields when the laws and policy of the State where the property is located has prescribed a different rule of transfer with that of the State where the owner lives.

We have been referred to the case of *Guillander* v. *Howell*,* recently decided by the Court of Appeals of New York, and as we understand the decision in that case, it harmonizes with the views presented in this opinion. A citizen of New York owning personal property in New Jersey made an assignment, with preferences to creditors, which was valid in New York but void in New Jersey. Certain creditors in New Jersey seized the property there under her foreign attachment laws and sold it, and the Court of Appeals recognized the validity of the attachment proceeding, and disregarded the sale in New York. That case and the one at bar are alike in all respects except that the attaching creditor there was a citizen of the State in which he applied for the benefit of the attachment laws, while Green, the plaintiff in error, was a citizen of New York; and it is insisted that this point of difference is a material element to be considered by the court in determining this controversy, for the reason that the parties to this suit, as citizens of New York, were bound by its laws. But the right under the Constitution of the United States and the law of Congress which Green invoked to his aid is not at all affected by the question of citizenship. We cannot see why, if Illinois, in the spirit of enlightened legislation, concedes to the citizens of other States equal privileges with her own in her foreign attachment laws, that the judgment against the personal estate located in her limits of a non-resident debtor, which a citizen of New York lawfully obtained there, should have a different effect given to it under the provisions of the Constitution and the law of Congress, because the debtor, against whose property it was recovered, happened also to be a citizen of New York.

* 35 New York Reports, 657.

Statement of the case.

The judgment of the Supreme Court of the State of New York is REVERSED, and the cause remitted to that court with instructions to enter

JUDGMENT FOR THE PLAINTIFF IN ERROR.

THE SIREN.

1. A claim for damages *exists* against a vessel of the United States guilty of a maritime tort, as much as if the offending vessel belonged to a private citizen. And although, for reasons of public policy, the claim cannot be enforced by direct proceedings against the vessel, yet it will be enforced, by the courts, whenever the property itself, upon which the claim exists, becomes, through the affirmative action of the United States, subject to their jurisdiction and control. The government, in such a case, stands, with reference to the rights of the defendants or claimants, as do private suitors, except that it is exempt from costs, and from affirmative relief against it, beyond the demand or property in controversy.
2. By the admiralty law, all maritime claims upon the vessel extend equally to the proceeds arising from its sale, and are to be satisfied out of them.

   These principles were thus applied:

   A prize ship, in charge of a prize master and crew, on her way from the place of capture to the port of adjudication, committed a maritime tort by running into and sinking another vessel. Upon the libel of the government, the ship was condemned as lawful prize, and sold, and the proceeds paid into the registry. The owners of the sunken vessel, and the owners of her cargo, thereupon intervened by petition, asserting a claim upon the proceeds for the damages sustained by the collision: *Held*, that they were entitled to have their damages assessed and paid out of the proceeds before distribution to the captors.
3. The District Court of the United States, sitting as a prize court, may hear and determine all questions respecting claims arising *after* the capture of the vessel.

APPEAL from the District Court for Massachusetts.

The steamer Siren was captured in the harbor of Charleston in attempting to violate the blockade of that port, in February, 1865, by the steamer Gladiolus, belonging to the navy of the United States. She was placed in charge of a prize master and crew, and ordered to the port of Boston